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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,916	12/16/2003	Clifford W. Turnbull	501326.01	8363
7590	09/20/2005		EXAMINER	
Steven H. Arterberry, Esq. DORSEY & WHITNEY LLP Suite 3400 1420 Fifth Avenue Seattle, WA 98101			GANAY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 09/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/738,916	TURNBULL, CLIFFORD W.	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 December 2003.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5,9-14 and 17-25 is/are rejected.  
 7) Claim(s) 6-8,15 and 16 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/5/05</u>	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Objections*

1. Claims 16-19 and 22 are objected to because of the following informalities: In claims 16-19, line1, the phrase “spray applicator” should be changed to --level-sensing supply vessel--, in order to maintain antecedent basis and have the proper preamble. In claims 22, the numeral “20” should be changed to --21-- in order to provide proper dependency and antecedent basis for “the first resistance value”. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 3, 5, 9-11, 14, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Buschmann.

Buschmann discloses a spray applicator comprising all the featured elements of the instant invention, note specifically gun 9 and level sensor comprising electrodes 2 and 3.

4. Claims 1, 2, 3, 9-12, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Weinstein.

Weinstein discloses a spray applicator comprising all the featured elements of the instant invention, note specifically gun 56 and level sensor comprising capacitance sensor 62.

5. Claims 1, 2, 3, 9-12, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Trusty et al.

Trusty et al discloses a spray applicator comprising all the featured elements of the instant invention, note specifically gun 13A and level sensor comprising capacitance sensor 73.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura.

Nakamura discloses a spray applicator comprising all the featured elements of the instant invention, note specifically gun 6 and level sensor 11.

7. Claims 11-14 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson.

Jackson discloses a level-sensing supply vessel comprising all the featured elements of the instant invention, note level sensor comprising electrodes 20/21/22 and alarm indication 92/94. The functional recitation of “for a spray applicator” in the preamble carries no patentable weight.

8. Claims 11-14, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kursel et al.

Kursel et al discloses a level-sensing supply vessel comprising all the featured elements of the instant invention, note level sensor comprising electrodes 17/18 and alarm indication 24. The functional recitation of “for a spray applicator” in the preamble carries no patentable weight.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1, 3, 4, 9, 10, 20 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Filicicchia et al.

Filicicchia et al discloses a spray applicator comprising all the featured elements of the instant invention, note specifically gun 35, level sensor 88a/88b/94/95 and alarm indication, see col. 5, lines 42-46. The apparatus of Filicicchia et al performs the method steps as claimed.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filicicchia et al.

Filicicchia et al discloses all the featured elements of the instant invention, except for the alarm signal being an audible or visual alarm. Note col. 5, lines 42-46 where it is disclosed that an alarm is activated to indicate a low liquid level. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide either a visual or audible alarm as a matter of obvious design choice since either alarm would perform equally as well in the apparatus of Filicicchia et al.

13. Claims 2, 11-13, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filicicchia et al in view Trusty et al.

Filicicchia et al discloses all the featured elements of the instant invention, except for the steps of determining a first resistance value and second resistance value. Note that Filicicchia et al shows probes/electrodes penetrating into the vessel 70a/70b and that comparisons are made between the various volumes(i.e. low, medium and high). Trusty et al, as discussed above, teaches the equivalence of various level sensors, i.e. magnetic float sensor or capacitance level sensor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide capacitance level sensors in the apparatus of Filicicchia et al since such level sensors would perform equally as well in the apparatus of Filicicchia et al. In using capacitance level sensors, it is well known that such sensors operate by determining the resistance values of the liquid in order to function as claimed.

*Allowable Subject Matter*

14. Claims 6, 7, 8, 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899.

The examiner can normally be reached on Monday, Tuesday, Wednesday, and Thursday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (571) 273-8300.

sjg

9/17/05

  
STEVEN J. GANEY  
PRIMARY EXAMINER  
9/17/05